only concentrated on his studies and did not participate in any political activities that may be or be deemed to be prejudicial to the security of Malaysia. He further deposed that he did not exercise or voluntarily claim and exercise in that country, namely Communist China, rights available exclusively to her citizens. On his return to Malaya in 1958 he stayed with his parents. He then got married and has now three children. He has not committed any offence nor has he become a member of any political party.

On behalf of the respondent it is argued that the order of deprivation of citizenship made by the Minister is not justiciable. Paragraph 2 of Part III of the Second Schedule to the Constitution was cited in support of the argument:—

"A decision of the Federal Government under Part III of this Constitution shall not be subject to appeal or review in any court."

That being so, it is contended that the applicant is no longer a citizen and therefore the Minister in his subjective determination can lawfully make the expulsion order.

It is common ground that the expulsion order can only be directed against a non-citizen. The burden is upon the applicant to show that he is a citizen in an application to set aside the expulsion order. See *Re Hoon Tye Wan.*[1] Has he discharged that onus? I think not. He has not set aside the order of deprivation of citizenship.

It is true that the said order is not reviewable by the courts by virtue of paragraph 2 of Part III of the Second Schedule but that cannot take away by implication the judicial review by means of *certiorari*. It is a principle not by any means to be whittled down that the subject's recourse to the courts for the determination of his rights is not to be excluded save by clear words. I need only refer to the case of *Re Gilmore's Application*[2] which was cited by Ismail Khan J. in *Soon Kok Leong* v. *Minister of Interior, Malaysia.*[3] Denning L.J. in that case said:—

"I find it very well settled that the remedy by *certiorari* is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not encugh. That only means 'without appeal'. It does not mean 'without recourse to *certiorari*'. It makes the decision final on the facts but not final on the law. Notwithstanding that the decision is by a statute made 'final', *certiorari* can still issue for excess of jurisdiction or for error of law on the face of the record . . . . If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts the rule of law would be at an end. . . ."

To that illuminating statement I will only add that officials and Ministers must be compelled to observe the law, and it is essential that bureaucracy must be kept in its place.

In the circumstances of this case, as the applicant has not discharged the onus which falls on him, the application must be dismissed.

Application dismissed.

Solicitors: *Cheah, Chew & Tan.*

IN RE R. SAMBASIVAM

[O.C.J. (Raja Azlan Shah J.) February 7, 1969]

[K.L. — Originating Motion No. 11 of 1968]

Administrative Law — Certiorari — Termination of service of public officer — Reasonable opportunity to be heard — Rules of natural justice — General Orders — Effect of.

This was a motion for an order of *certiorari* to quash the decision of the Public Services Commission, in terminating the appointment of the applicant as Junior Assistant Commissioner for Labour. It was alleged that (a) the proceedings being initiated by the secretary to the Ministry of Labour and not by the Head of Department, were *ultra vires* the provisions of General Order 38 and therefore void, (b) the committee of enquiry had failed to consider the question of jurisdiction, (c) the Public Services Commission had been influenced by extraneous considerations without giving the applicant an opportunity to explain them, thereby violating the rules of natural justice, (d) there was likelihood of bias against the applicant, and (e) the committee of inquiry had admitted and acted on hearsay evidence.

Held: (1) the procedural provisions in the General Orders are mandatory but in this case as the Secretary to the Ministry of Labour was also a Head of Department there had been no breach of the provisions of the General Orders;

(2) in this case the committee of inquiry had considered the question of jurisdiction but had only failed to convey its decision to the applicant;

(3) the rules of natural justice had not been violated;

(4) on the facts there was no evidence of likelihood of bias;

(5) the committee of inquiry is not a court of law and, so long as the rules of natural justice are observed, it is not bound to follow strictly the procedure laid down in the Evidence Ordinance.

Cases referred to:—

(1) *General Medical Council* v. *Spackman* [1943] 2 All E.R. 377 at p. 341.

(2) *Russell* v. *Duke of Norfolk & Ors.* [1949] 1 All E.R. 109 at p. 118

(3) *Jeffs* v. *New Zealand Dairy Production and Marketing Board* [1967] 1 A.C. 551.

(4) *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [1968] 1 W.L.R. 694.

(5) *State of Mysore* v. *Shivabasappa* A.I.R. 1963 S.C. 375.

ORIGINATING MOTION.

S. Woodhull for the applicant.

Ajaib Singh (Federal Counsel) for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a motion for an order of *certiorari* to quash the decision of the Public Services Commission dated 30th April, 1968, terminating forthwith the appointment of the applicant as a Junior Assistant Commissioner for Labour in the Ministry of Labour of the Government of Malaysia.

The applicant was on the permanent establishment in Division II of the Public Service. On 8th December, 1966, the Secretary to the Commission wrote to the applicant through the Secretary of his Ministry that his "conduct appears to the Head of the Department to merit dismissal" and called upon him to exculpate himself. It is obvious that he failed to exculpate himself, and in accordance with General Order 38(c) Cap. D., a committee of enquiry was set up to investigate the complaints against the applicant. The committee sat on 27th, 28th and 29th November, 1967, when hearing was adjourned, and resumed on 5th, 6th and 7th March, 1968. The proceedings were conducted by Mr. S. Kumar the Commissioner for Labour, and Mr. M. Shankar represented the applicant.

On 28th November, 1967, in the course of cross-examination of Mr. S. Kumar, the following evidence was elicited:—

"Q. The letter dated the 8th December 1966 to Sivam that his conduct appeared to the Head of Department to merit dismissal was sent through the Setia Usaha Kementerian Buroh?

A. Yes.

Q. Dato' Yeap Kee Aik was then the Secretary to the Ministry of Labour?

A. Yes.

Q. The letter was sent through him because it was he who reported to the Public Services Commission that it appeared to him that Sivam's conduct merited dismissal?

A. Yes.

Q. Did he make this report verbally or in writing?

A. He did it in writing by a letter dated the 26th October 1966.

Q. So the decision to initiate proceedings against Sivam was his and his alone?

A. Yes.

Q. But it is you who is Head of Department and not Dato' Yeap Kee Aik?

A. Yes, I am the Head of Department and not Dato' Yeap."

When the above evidence was elicited, Mr. Shankar put in a written submission on 29th November, 1967, to the effect that the proceedings initiated against the applicant were *ultra vires*. The committee adjourned to consider the submission. On 13th January, 1968, the Secretary to the Commission in reply to the applicant's letter of 28th December, 1967, indicated that the committee had decided to defer its decision pending completion of the enquiry. It is established that the said decision was never communicated to the applicant. On 30th April, 1968, the applicant was notified of his dismissal.

Before me four grounds were relied in support of this application:—

(i) that the proceedings before the committee of inquiry of the Public Services Commission were improperly instituted;

(ii) that the committte of inquiry had failed to consider matters preliminary or collateral to the matter before it and affecting its jurisdiction;

(iii) that the proceedings before the committee of inquiry are void on the ground that they are contrary to the rules of natural justice;

(iv) that the committee of inquiry improperly admitted hearsay evidence against the charges preferred against the applicant.

It is urged on behalf of the applicant that the proceedings before the committee of inquiry, which were instituted by the Secretary to the Ministry and not by the Head of Department, violated the provisions of General Order 38 Cap. D., were *ultra vires*, and therefore void. General Order 38 reads:—

"If the conduct of an officer on the pensionable establishment in Division I or II of the Public Service appears to the Head of Department to merit dismissal, the following procedure will be adopted, unless the method of dismissal is otherwise provided for either in these Regulations, or by special legislation:"

and then follows the procedural provisions relating to disciplinary proceedings with a view to dismissal. I agree that these procedural provisions are to be treated as mandatory and therefore must be strictly construed. Reliance is also placed on a passage in *S.A. de Smith* on "Judicial Review of Administrative Action" 2nd Edn., at page 212:—

"If procedural rules have been laid down (e.g. for the hearing of disciplinary charges against police officers), those rules will be treated as mandatory except in so far as they are of minor importance; and upon them there will be engrafted the implied requirements of natural justice."

It is true that Mr. Kumar is the Head of the Department of Labour and not Dato' Yeap Kee Aik, but the Department of Labour is one of many Departments in the Ministry of Labour. The overall administrative head of the Ministry is the Secretary. In the light of this observation the meaning to be attached to the provisions of General Order 3(g) Cap. A is quite clear. The Secretary to the Ministry of Labour is also Head of Department. General Order 3 (g) reads:—

"The term 'Head of Department' shall be deemed to include a Secretary to a Minister or Ministry and the Principal Establishment Officer in respect of the services listed in sub-paragraph (a) of General Order 41".

It is said that the definition of "Head of Department" as defined in General Order 3(g) Cap. A

which deals with appointments and promotions is not applicable to the provisions under Cap. D., i.e., conduct and discipline regulations. The fallacy lies in assuming that there are two different Heads of Departments one dealing with appointments and promotions and the other dealing with disciplinary proceedings. It is obvious that that is not the intention of the General Orders. It is then urged that the said regulation concerns services listed in sub-paragraph (a) of General Order 41 Cap. A and the applicant is not a member listed under the said paragraph. In my opinion that is a misinterpretation of the said regulation. Only the services listed in sub-paragraph (a) of General Order 41 Cap. A come within the portfolio of the Principal Establishment Officer while other services come under the administrative heads of the various Ministries. The true view is that while the mandatory provisions of General Order 38 Cap. D. must be strictly construed, the phrase "appears to the Head of Department to merit dismissal" which precedes those provisions is only a machinery providing for the mode in which the question which can only be decided by the disciplinary authority is to come before him. There can be no doubt that the power of dismissal remains solely with the disciplinary authority.

The next argument proferred is that failure to consider the collateral question of jurisdiction is a serious procedural defect which deprives the committee of jurisdiction: (See *S.A. de Simth* at page 101). I would associate myself with counsel's submission if that is the correct position, but that is not the case here. The committee did not shut its eye to the issue. It considered the collateral question but indicated in its letter of 13th January, 1968, that it "had decided to defer its decision pending completion of the enquiry". The fact that it completed the enquiry and submitted its report to the disciplinary authority is indicative of conduct amounting to rejection of counsel's submission. Regretably that decision was never conveyed to the applicant. Is failure to do so a serious defect in procedure as to deprive it of jurisdiction? I think not. That cannot be equated with failure to consider the collateral question of jurisdiction or breach of the principles of natural justice both of which are very serious defects which amount to deprivation of jurisdiction.

The third point relied upon by the applicant is that in initiating proceedings against him the Public Services Commission was influenced by extraneous considerations without giving him an opportunity to explain them, thereby violating the rules of natural justice. In essence it is said that the letter of Dato' Yeap Kee Aik of the 26th October 1966 contained allegations of misconduct against the applicant but they were not made the subject-matter of the charges preferred against him. That letter was shown to the applicant on the 2nd day of hearing but it was not formally produced in the course of the enquiry. The net result of such omission, it is alleged, is that he was denied an opportunity of making his defence on matters which the commission was cognisant but which did not form part of any of the charges, thereby leading to the inevitable inference that the commission was influenced by that letter in commencing proceedings against him. On behalf of the commission it is contended that the said letter never formed part of the proceedings and had in no way influenced their decision.

The law requires that the commission should observe the rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached. What is the essence of natural justice in rendering justice? It is well settled that the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act and the question whether in a particular case they have been contravened must be judged not by any pre-conceived notions of what they may be put in the light of the statutory rules and regulations. As was pointed out by Lord Atkin in *General Medical Council* v. *Spackman* [1] at page 341:—

> "The procedure which may be very just in deciding whether to close a school or an insanitary house is not necessarily right in deciding a charge of infamous conduct against a professional man."

See also the observations of Tucker L.J. in *Russell* v. *Duke of Norfolk & Ors.*[2] Stating it broadly, and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. There must be no malversation of any kind.

As I have indicated earlier, that letter is merely an information which entitles the commission to act. It was shown to the applicant but it was not made use of against him. That is the explanation why it was not formally produced and formed part of any of the charges. That being so, it is beyond comprehension how it can be argued that the applicant was deprived of an opportunity of explaining something which is not the subject matter of any of the

charges. In my view the rules of natural justice had not been violated. The case of *Jeffs* v. *New Zealand Dairy Production and Marketing Board* [3] relied on by the applicant is too remote for present consideration.

This application is also supported on the authority of *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [4] which held that *certiorari* would lie where there is a reasonable impression of bias even though there is no actual bias. Assuming that is an unassailable proposition of law, the probabilities in the present case, viewing it objectively, do not justify such an inference, let alone on the basis of "real likelihood" of bias. See *S.A. de Smith* at pp. 244-246.

The last but by no means the least point for consideration is whether in admitting hearsay evidence in the course of the inquiry by the Committee of Inquiry, the said committee had violated the implied duty to act judicially. The short answer is that the committee in exercising quasi-judicial functions is not a court of law. It can obtain any information which is relevant for the purpose of the inquiry, from any source or through any channel unfettered by the strict rules of evidence and procedure which govern court proceedings. The only limitation is that the rules of natural justice must be observed. If the rules are satisfied, the inquiry is not open to attack on the ground that the procedure laid down in the Evidence Ordinance was not strictly followed: see *State of Mysore* v. *Shivabasappa.* [5]

The motion is dismissed with costs.

Motion dismissed.

Solicitors: *Shearn, Delamore & Co.*

KHOO TING HONG & ANOR. v. SIM GUAN SOON & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Choor Singh J.) February 7, 1969]

[Singapore—Federal Court Civil Appeal No. Y.43 of 1968]

Negligence — Trespasser — Duty of occupier to trespasser — Duty limited to avoidance of malicious injury only — Mere negligence insufficient to support claim for damages.

The deceased was a trespasser at a rubbish dump and she was killed when she was run into by a lorry driven by the first appellant who was reversing it towards the rubbish dump. The learned trial judge ([1968] 2 M.L.J. 203) held that the appellants owed a duty of care to the deceased and the act of the 1st appellant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part. It was also held that the deceased was contributorily negligent to the extent of 50%. The appellants appealed.

Held, allowing the appeal: the duty of an occupier towards a trespasser is only that of not inflicting malicious injury and as in this case there was no evidence that the first appellant knew that the deceased was at the rear of the lorry or anywhere near its path when he commenced to reverse it, there was no duty on the appellants towards the deceased and therefore they were not liable in damages.

[Editorial Note: Reference may usefully be made to the case of *Tan Lian Chye* v. *Malayan Railway Administration* [1967] 2 M.L.J. 276.]

Cases referred to:—

(1) *Latham* v. *Richard Johnson & Nephew Ltd.* [1911-13] All E.R. Rep. 117.

(2) *Robert Addie & Sons (Collieries) Ltd* v. *Dumbreck* [1929] A.C. 358.

(3) *Edwards* v. *Railway Executive* (1952), A.C. 737.

(4) *Grand Trunk Railway Co. of Canada* v. *Barnett* [1911] A.C. 361.

(5) *Commissioner of Railways* v. *Quinlan* [1964] 1 All E.R. 897.

(6) *Commissioner of Railways* v. *McDermott* [1966] 2 All E.R. 162.

FEDERAL COURT.

Choa Hick Tin (State Counsel) for the appellants.

H.E. Cashin for the respondents.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the court): This is an appeal from a judgment of the High Court in which it was held that the plaintiffs, as administrators of the estate of one Lim Siew Liang, deceased, are entitled to recover damages from the defendants for the deceased's loss of expectation of life.

The deceased was a poor old woman and one day when she was looking over some rubbish dump in Kolam Ayer Lane she was run into and killed by a lorry driven by the first defendant which was then reversing towards the said rubbish dump. It was alleged at the trial that the first defendant did not look to the rear to ensure that it was safe for him to reverse the lorry at the time of the accident. The defendants alleged that the deceased was a trespasser on the dumping ground; that she entered it at her own risk and that they owed no duty to take reasonable care for her protection. The trial judge held that "the defendants owed a duty of care to the deceased and the act of the first defendant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part." The trial judge held further that the deceased was aware that lorries of the Public Health Department were going in and out of the dumping ground; that she knew that these lorries reverse to get to the face tip to tip the refuse; that she failed to keep a proper lookout; that she failed to observe that the lorry was reversing and that she failed to move to a safe spot to avoid the